

Notice of Allowability

Application No.

09/964,065

Applicant(s)

KOVESDI ET AL.

Examiner

Scott D. Priebe, Ph.D.

Art Unit

1633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the interview of 14 Oct. 2005.
2. ☒ The allowed claim(s) is/are 53-60,63-70,73-88 and 91-98.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 20050505
- ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
- ☒ Examiner's Amendment/Comment
- ☒ Examiner's Statement of Reasons for Allowance
- ☐ Other _____

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EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Applicant's representative was informed that due to the adverse outcomes of Interference Nos. 104825 and 104829, prosecution on claims 44, 48, 50, 52, 89 and 90 would have to be re-opened unless these claims were cancelled. Consequently, no extension of time is required for this amendment. Authorization for this examiner's amendment was given in telephone interviews with John Kilyk, Jr. on 14 Oct. 2005 and Melissa Kolom on 17 Oct. 2005.

The application has been amended as follows:

Claims 44, 48, 50, 52, 89, and 90 have been cancelled.

The claims have been re-ordered as follows: 53-60, 73-80, 91-94, 63-70, 81-88, 95-98.

They will be numbered in this order in the patent.

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The following is an examiner's statement of reasons for allowance:

The provisional rejections for obviousness-type double patenting over copending application Nos. 08/258,416; 09/261,922; and 09/934,207 are withdrawn since these applications have not been allowed and are still under prosecution. MPEP 804, paragraph (1)(B).

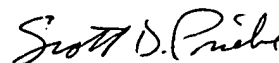
A terminal disclaimer over U.S. Pat. No. 5,994,106 has been filed and recorded. As a result of Interference No. 105046, all claims in the '106 patent were held to be unpatentable to the patentee and the patent is no longer in force. Consequently, the basis of the rejection for obviousness-type double patenting over the '106 patent in this application no longer exists. Applicant should consider filing a petition under 37 CFR 1.182 to seek nullification of the terminal disclaimer over the '106 patent, as was filed and granted in co-pending application 08/258,416. See MPEP 1490, paragraph (A).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott D. Priebe, Ph.D. whose telephone number is (571) 272-0733. The examiner can normally be reached on M-F, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Nguyen can be reached on (571) 272-0731. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SCOTT D. PRIEBE, PH.D.
PRIMARY EXAMINER